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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 71

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,
Petitioners,

vs.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,
Respondent,

AND

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,
Petitioners,

vs.

EASTERN HEIGHTS PRESBYTERIAN CHURCH and FRANK L. PERRY, SR., JOHN BRUNING, LESTER R. SARGENT, HARDIN C. NORMAN and ARMIN S. HUBERT, Trustees,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF OF RESPONDENT, MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH

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No. 71

PRESBYTERIAN CHURCH IN THE UNITED STATES, ET AL.,

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vs.

MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

BRIEF OF RESPONDENTS

JURISDICTION

We respectfully submit that this Honorable Court does not have jurisdiction under 28 U.S.C.A. 1257 (3) in this matter.

QUESTIONS PRESENTED

Respondent respectfully submits that the following are the correct questions presented:

1. Jurisdiction of this Court.

2. Can civil courts settle property rights in a church dispute.

3. Can denomination require local church to use its property for propagation of doctrines in conflict with the fundamental teachings of the denomination as accepted at the time the local congregation united with denomination.

STATEMENT OF THE CASE

Mary Elizabeth Blue Hull Memorial Presbyterian Church was organized in 1868 by the Independent Presbyterian Church of Savannah, Georgia, a congregational church of the Presbyterian faith. Mary Elizabeth Blue Hull Memorial Presbyterian Church in 1890 affiliated with The Presbyterian Church in the United States, the Petitioners herein. The Presbyterian Church in the United States and Hull Memorial were in full accord and agreement at the time of affiliation on matters of doctrine, tenets and beliefs. On April 17, 1966 at a congregational meeting called well in advance, with proper notice to all members, and for the express purpose of deciding whether or not to withdraw from the Savannah Presbytery and The Presbyterian Church in the United States, after democratic discussion the membership voted overwhelmingly to withdraw, constitute themselves an independent Presbyterian church and to practice, teach and enjoy the true Presbyterian religion as practiced at the time they affiliated with The Presbyterian Church in the United States in 1890 and as taught and practiced by their forefathers.

This Respondent charged that the General Assembly of The Presbyterian Church in the United States had made radical departures from that faith since the time of Hull Memorial's affiliation in 1890 in:

1. Teaching and endorsing civil disobedience.

2. Ordaining women as preachers and ruling elders.

3. Making pronouncements and recommendations which concern civil, economic, social and political matters.

4. Giving support to the removal of Bible reading and prayer in the public schools.

5. Making declarations which would have the effect of assuming ownership of local church property.

6. Printing official publications which teach doctrines fundamentally divergent to the Presbyterian faith.

7. Invalidating and replacing parts of the Confession of Faith which the Presbyterian Church in the United States was bound to uphold.

8. Participating as an agency member of the National Council of Churches of Christ In the United States of America and giving backing to actions of said council in the area of sex, race and world affairs which are radical departures from the faith and practice of the Presbyterian faith as it existed at the time of the affiliation of Hull Memorial.

This Respondent contended that The Presbyterian Church in the United States had so substantially deviated from the faith that it was impossible to retain its affiliation and at the same time adhere to the original doctrines, tenets and beliefs.

After the withdrawal and after Hull Memorial's right of appeal and representation in the Councils of The Presbyterian Church in the United States no longer existed, the Savannah Presbytery of The Presbyterian Church in the United States notified the congregation and ruling elders of Hull Memorial that they were claiming ownership of the Hull Memorial property and threatened to physically take over the property if the congregation did not voluntarily surrender it.

In order to avoid the physical eviction and for the purpose of settling property rights Hull Memorial filed an injunction in the Superior Court of Chatham County, Georgia seeking to enjoin a threatened expulsion from their property. Appellants thereupon filed a cross action asking the Court to declare them the owners of the real property in question.

The case proceeded to trial before a jury on the issue of substantial departure from the faith, with no federal or Constitutional question being raised by either party. The case terminated in a jury verdict in favor of the local congregation. Appellants appealed the decision to the Georgia Supreme Court on the grounds that the trial court did improperly charge the jury on the issue of the degree of deviation necessary before the civil court acquired jurisdiction and that the Respondents had not exhausted their appeals to the General Assembly before seeking an injunction. This appeal was not based on any federal question. The Georgia Supreme Court sustained the rulings of the trial court and Appellants filed a motion for a rehearing and for the first time raised the federal question and claimed that their right to the Constitutional guarantee of freedom of religion had been violated. Their motion was denied and a petition for certiorari was filed in this Honorable Court.

I

Petition for Writ of Certiorari Should Have Been Denied Federal Question Not Being Properly Raised

This Court in construing statutes giving it power to review certain final decisions of the highest state courts, has held consistently that the federal question necessary for its appellate jurisdiction must have been raised and presented in the highest state court for decision, and that, unless it could not have been raised earlier, it is not raised and presented for decision below when it is suggested for the first time in a motion for rehearing which is denied by the state court without opinion. *American Surety Company* v. *Vevian F. Baldwin et al.*, 287 U.S. 156, 77 L. Ed. 231; *Susquehanna Boom Co.* v. *West Branch Boom Co.*, 1884, 110 U.S. 57, 3 S. Ct. 438, 28 L. Ed. 69; *Loeber* v. *Schroeder*, 1893, 149 U.S. 580, 585, 13 S. Ct. 934, 37 L. Ed. 856; *McMillen* v. *Ferrum Mining Co.*, 1905, 197 U.S. 343, 347, 25 S. Ct. 533, 49 L. Ed. 784; *Godchaux Co.* v. *Estopinal*, 1919, 251 U.S. 179, 181, 40 S. Ct. 116, 64 L. Ed. 213; *Citizens National Bank of Cincinnati* v. *Durr*, 1921, 257 U.S. 99, 106, 42 S. Ct. 15, 66 L. Ed. 149; *Rocker* v. *Fidelity Trust Co.*, 1923, 261 U.S. 114, 117, 43 S. Ct. 288, 67 L. Ed. 556, and the cases cited therein; *Herndon* v. *State of Georgia*, 1935, 295 U.S. 441, 79 L. Ed. 1530.

The Supreme Court of the United States acts upon the case as made to the Court below when judgment was rendered and cannot incorporate into the record new matter appearing on a petition for rehearing. *Simmerman* v. *Nebraska*, 1885, 116 U.S. 54, 6 S. Ct. 333, 29 L. Ed. 535.

Whether a federal question is properly raised in the trial court of the State is a question of State practice, *Chicago, Indianapolis & Louisville Railway Company* v. *Patrick McGuire et al.*, 49 L. Ed. 413, and an attempt to raise a federal question before a State Supreme Court up-

on a petition for rehearing after judgment, is too late, unless that Court entertains the question and decides it. *Herndon* v. *State of Georgia*, 1935, 295 U.S. 441, 79 L. Ed. 1530.

The Constitution of the State of Georgia provides in Section 2-3704 of the Code of Georgia Annotated that the Supreme Court of Georgia has no original jurisdiction but shall be a Court alone for the trial and correction of errors of law.

Under repeated rulings of the Supreme Court of Georgia the Court has held that it will not entertain a Constitutional question unless the question had been raised in the trial court and a ruling made thereon. In the case of *Herndon* v. *The State of Georgia*, 179 Ga. 597, the Supreme Court of Georgia stated on page 601:

> " 'Where it is sought to invoke a ruling by the Supreme Court on a constitutional question, the question must have been raised in the trial court and a ruling made thereon and the case brought to the Supreme Court for review.' In *Dunaway* v. *Gore*, 164 Ga. 219, 230 (138 S.E. 213), the following statement was made: 'Indeed it may be said that under the provision of our constitution, art. 6, sec. 2, par. 5 (Code, § 6502),[1] which provides that the Supreme Court 'shall be a court alone for the correction of errors,' this court would in no event have jurisdiction to consider the merits of any question which is either intentionally or unintentionally omitted in the trial court. . . .' "

This Honorable Court held in *Herndon* v. *State of Georgia*, 295 U.S. 441, and on rehearing 296 U.S. 661, that generally an attempt on a petition for rehearing to raise the federal question after judgment in the Supreme Court of the State comes too late unless the Court agrees to en-

1. Code § 6502 was a 1910 Georgia Code and is now § 2-3704 of the Georgia Code.

tertain and decides the question or unless the Court's ruling could not have been anticipated and petition for rehearing provides the first opportunity to raise the federal question.

There is no question in this case but that the Constitutional question was never raised in the trial court nor was any effort made to raise it nor was any federal question raised in the appeal to the Supreme Court of Georgia, but was first raised upon the motion for rehearing in the Supreme Court of Georgia (A. 139),[2] at which time the petitioners maintained that the relief sought by the plaintiffs in the Court below would controvert the First and Fourteenth Amendments to the Constitution of the United States. The motion for rehearing was denied by the Supreme Court of Georgia which did not rule on the Constitutional question. (A. 152).

There was no reason why the Constitutional or federal question could not have been raised in the trial court.

While the Petitioners contend that the Supreme Court of Georgia reversed long standing case law in overruling *Mack* v. *Kime*, 129 Ga. 1, thus denying Petitioners equal protection of the law and violated the separation of Church and State, all in complete disregard of the said First and Fourteenth Amendments to the Constitution of the United States and the decisions of this Court.

The Supreme Court of Georgia in its decision on the case now considered by this Court states (A. 125), as to *Mack* v. *Kime*, 129 Ga. 1:

> "The *Mack* case, in discussing the degree of abandonment or departure necessary to obtain protection, uses terminology such as 'complete abandonment,' 'purposes utterly foreign,' 'entirely abandon,' 'utterly abandon,' and 'abandon altogether.' We disagree. We

2. Page references preceded by "A" refer to pages of the Appendix.

do not believe that 'complete' or like degree of abandonment or departure is necessary for relief. To the extent that *Mack* v. *Kime*, 129 Ga. 1, supra, requires such standard, it is expressly overruled."

We respectfully submit that the only point overruled by the Supreme Court of Georgia in the *Mack* v. *Kime*, 129 Ga. 1, case was the degree of abandonment or departure necessary for relief and this was only an interpretation by the Court of its previous ruling; at most a modification as to the degree of abandonment. This was also the ruling of the trial court, and in fact the trial Judge had charged the jury as to substantial abandonment. (A. 111). The Appellants did not raise the Constitutional point in the trial court in an objection to the charge nor did they raise the point in their enumeration of errors to the Supreme Court of Georgia.

Appellants cannot plead ignorance of the laws of Georgia and the general rule as stated in *Mack* v. *Kime*, 129 Ga. 1 (2) (58 S.E. 184, L.R.A. (N.S.) 675), which held:

"The general rule is that where property rights are involved, the civil courts will interfere to protect the members of an ecclesiastical organization who adhere to the tenets and doctrines which the organization was organized to promulgate, and protect them in the right to use the property, as against those members of the organization who are attempting to divert the same to purposes utterly foreign. . ." See also *Tucker* v. *Paulk*, 148 Ga. 228 (3) (96 S.E. 339), where this court approved the trial court's finding on whether the plaintiffs had 'departed from the organization and doctrine of the church.' "

The civil courts of Georgia have always ruled that when property rights are involved civil courts will protect them against wrongful diversion.

The Supreme Court of Georgia said in *Dowdell et al.* v. *Cherry et al., trustees,* 209 Ga. 849:

> "While courts are reluctant to interfere in questions affecting the internal affairs of a religious organization, nevertheless, where property has been conveyed in trust for the use and benefit of a church, a court of equity will assume jurisdiction for the purpose of preventing a diversion of the trust."

and in *Chatfield* v. *Dennington et al.,* 206 Ga. 762, the Supreme Court of Georgia said:

> "3. While courts are reluctant to interpose in questions affecting the management of the temporalities of a church where property is devoted to a specific doctrine or purpose, the Courts will prevent it from being diverted from the trust."

The law of Georgia stated in Section 22-408 of the 1933 Code of Georgia Annotated:

> "Courts are reluctant to interpose in questions affecting the management of the temporalities of the church; but when property is devoted to a specific doctrine or purpose, the courts will prevent it from being diverted from the trust."

The Petitioners were therefore bound to anticipate that the Supreme Court of Georgia would follow its previous decisions and assume jurisdiction where property is involved for the purpose of preventing a diversion of the trust and in fact in the trial court Petitioners had filed pleadings (A. 21), asking for affirmative relief, thus seeking a ruling which they contended on their motion for rehearing in the Supreme Court of Georgia would violate the Constitution of the United States. It follows that their contention that they raised the federal question at the first opportunity is without substance and the certiorari should be dismissed.

II

Civil Courts Can Settle Property Rights in a Dispute Between Church Groups

Appellants contend that civil courts have no jurisdiction to settle property rights in any church case regardless of whether there has been a substantial deviation from its tenets and doctrines by one of the parties since the action would violate the exercise and establishment of religion clauses of the First Amendment and the due process clause of the Fourteenth Amendment to the United States Constitution.

It is true that civil courts will not enter into disputes between church groups where *only* matters of religion are concerned. It has been long established however that civil courts do have jurisdiction in such matters where civil rights or property rights are involved. While civil courts do not have jurisdiction of ecclesiastical matters, church courts likewise have no power to settle the question of title to real property. The proposition that civil courts jurisdiction can be properly invoked in church disputes where property rights are involved is well established. Appellants themselves recognized this rule in their original argument to the Supreme Court of Georgia where jurisdiction was not questioned and jurisdiction was actually invoked by them in their cross bill praying that they be declared the owners of the real property. The position taken by the Appellants at that time was not jurisdiction but that Georgia laws required total deviation rather than substantial deviation from the faith as charged by the trial Judge. They cited *Mack* v. *Kime*, 129 Ga. 1 (58 S.E. 184), as their authority for this proposition. This case that they so strongly relied upon stated the long established Georgia rule that civil courts do have jurisdiction in such matters where property is involved.

Recognition of civil court jurisdiction in such matters is by no means confined to the State of Georgia. The California Supreme Court stated that State's ruling as follows:

> "Lack of jurisdiction by civil courts in church disputes is always qualified by the rule that civil and property rights will be adjudicated by the civil court." *Queen* v. *Board of Directors of Rosicrucian Fellowship*, 342 P. 2d 424.

Some of the other jurisdictions where a similar rule prevails are as follows:

Church of the Nazarene v. *Church of the Nazarene*, Louisiana, 132 So. 2d 667.

Stansberry v. *McCarty*, Indiana, 149 N.W. 2d 683.

Holiman v. *Dovers*, Arkansas, 336 S.W. 2d 197.

In the *Holiman* case the Supreme Court of Arkansas in an appendix listed twenty-seven jurisdictions; twenty-six of which held that civil courts have jurisdiction to settle property rights. The Supreme Court of the United States denied certiorari in a similar dispute where the Kansas Supreme Court took jurisdiction to settle property rights. *Whipple* v. *Fehsenfeld*, Kansas, 346 U.S. 813, 249 P. 2d 638.

Appellants urge you to upset the rulings in a majority of the jurisdictions and to hold that there can be no jurisdiction by civil courts in any church dispute. They contend that this court has in fact so ruled in the cases of *Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94 (1952) and *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190 (1960). These cases are easily distinguishable from the present case and do not prevent the State courts from settling property rights in proper cases.

The property in the *St. Nicholas* cases was furnished partly by the mother church and partly by the local congregation; whereas, in the Hull case no property, money or financial aid of any kind was ever extended to the local congregation by Appellants either in the acquisition or maintaining of the property. Secondly there was an obvious attempt by the New York Legislature and later by the New York Courts in the *St. Nicholas* cases to assist the local group in obtaining control of the property. This was a violation of the neutral status required by the freedom of religion clause of the United States Constitution. There was an obvious attempt to circumvent the relationship of the local congregation and the mother church and was clearly in violation of the freedom of religion clause of the Constitution. Thirdly there was no issue of deviation or departure from the original doctrines, tenets and beliefs of the Church as was established in the Hull Memorial case; and fourthly there had been no historical precedent established as to ownership of property as was established by the evidence in the Hull Memorial case. Neither the Georgia legislature nor the Georgia Courts have attempted to change any rule in the middle of the game. The Georgia Supreme Court has simply interpreted its law as it has the right to do under the doctrine laid down in *Erie Railroad Company* v. *Tompkins*, 304 U.S. 64. It has settled property rights in accordance with rulings previously laid down in *Mack* v. *Kime*, 129 Ga. 1; *Chatfield* v. *Dennington*, 206 Ga. 762; *Dowdell* v. *Cherry*, 209 Ga. 849; *Tucker* v. *Paulk*, 148 Ga. 228; and *Stewart* v. *Jarrell*, 206 Ga. 855.

Civil jurisdiction in proper cases is not confined to congregational type churches. See *Davis* v. *Scher*, 97 N.W. 2d 137. This case involved a Jewish Synagogue and concerned mixed seating. See also *Geiss* v. *Trinity Lutheran Church Congregation*, 230 N.W. 658.

The California Courts have rejected the theory that the *St. Nicholas* cases took away all State rights to settle property questions:

> "Being mindful of the view that religious associations should be afforded certain prerogatives of sovereignty (*Kedroff* v. *St. Nicholas Cathedral*, 344 U.S. 94; *Kreshik* v. *St. Nicholas Cathedral*, 363 U.S. 190) yet the State does have an interest in affording the disputants some Judicial recourse for resolving their arguments. Although we express reluctance to become embroiled in such controversy, we recognize the Judicial power to determine and protect property rights." *Mt. Zion Baptist Church et al.* v. *Second Baptist Church of Reno*, 432 P. 2d 328 (1967).

III

Appeal to a Higher Church Court Is Not Necessary Where the Higher Church Tribunal Is a Party to the Action

The highest Church Tribunal in The Presbyterian Church in the United States is a party to this action. The Presbyterian Church in the United States complains to the Court that Petitioner should be declared the owner of the real property in question on the grounds that no appeal was made to its General Assembly. Petitioner takes the position that it is the proper Tribunal to settle ownership of the property in question and that Respondents are not entitled to civil court relief, since no appeal was made of the action taken by its Savannah Presbytery. At this time it must be remembered that Respondents had no right of appeal since they had already withdrawn from The Presbyterian Church in the United States. The Savannah Presbytery prompted the civil court action by demanding possession of Respondents' property. Both the Presbytery and The Presbyterian Church in the United States have claimed ownership through its resolutions concerning the

congregation and through its pleadings. Can it now be said that there were effective remedies within the church judicatory? Any appeal would have been a lesson in futility.

There is no doubt that Church controversies involving factions and individuals where the General Assembly is not a party, such as ex-communication and expulsions of members and ministers, and the controversies involving different factions of one congregation, must be decided within the church itself.

The present dispute is between the congregation of Hull and the highest church Tribunal. It is not between two factions of the Hull congregation. Being a controversy over ownership of property between the congregation of Hull and The Presbyterian Church in the United States, there is no impartial tribunal within the church to hear an appeal.

Under the facts in this case, Respondents were not required to make a useless appeal.

IV

The Historical Customs and Usages of The Presbyterian Church in the United States Regarding Ownership of Real Property Cannot Be Disregarded

The Presbyterian Church in the United States in 1890 had an established policy and had taken a definite and positive position of nonownership of local church property where no express trust existed in their favor and where they had no monetary interest in such property. Dr. Aiken Taylor, Editor of "The Presbyterian Journal", an ordained minister in The Presbyterian Church in the United States, with a PHD from Duke University in the field of church history and who specialized in the field of church

history and the operation of church courts and a representative of the General Assembly to the North American Alliance of the World Presbyterian Alliance, was offered as an expert witness by Respondents and fully outlined the historical background of the customs and usages of The Presbyterian Church in the United States concerning ownership of local church property. (A. 68-83). He testified that the only provision where a Presbytery can take over the property of a local congregation was in Section 6-3 of the Book of Church Order, and that provision provided that if a Church is dissolved by the Presbytery or otherwise ceases to exist, and no disposition has been made of its property, the property shall go to the Presbytery. (A. 77). Hull Memorial Presbyterian Church did not cease to exist nor was it dissolved by the Presbytery but withdrew from the Presbytery as a unit. It is interesting to note here that no member of Hull has ever joined the Presbytery in this suit. He testified positively that it was an established policy that through long established customs and usages, The Presbyterian Church in the United States had a well established position that local church properties were the property of the local congregations. It is worthy of noting that the expert witness offered by Respondents did not deny the position taken by Dr. Taylor.

Respondents relied on this policy and had a right to do so since it was an established custom and usage of The Presbyterian Church in the United States and it had a right to expect that this position would not change without an opportunity by the local churches to withdraw their property from any future attempted domination or control by the General Assembly.

The rule on the binding effect of customs and usages of the church is stated in Corpus Juris Secundum,

> "Where property rights are involved, ecclesiastical questions are to be determined in accordance with the laws, customs and usages of the Church involved." 76 C.J.S., Section 86, Religious Societies.

Unlike other Churches with hierarchical forms of government the Constitution of The Presbyterian Church in the United States has no provisions placing ownership of local church property in the higher church, A resolution is now before the General Assembly attempting to add such a provision to its Constitution.

However, at the time of Hull's withdrawal the Petitioners and Respondent would have been bound by the laws, customs and usages of the church then in force.

V

Substantial Deviations from the Faith from the Fundamental Teachings of the Denomination by the National Church Justifies Withdrawal by a Local Congregation

We respectfully submit that the Respondent would be entitled to keep its property because of Petitioner's deviations from the Presbyterian faith as practiced in 1890, the time of affiliation of Respondents with Petitioners.

All the parties hereto agree that the basis for the Presbyterian faith in 1890 and today are the Holy Bible, Old and New Testaments, the Westminster Confession of Faith, the Book of Church Order and the Larger and Shorter Catechisms.

While there were eight reasons listed in Respondent's petition for Hull's withdrawal from The Presbyterian Church in the United States, all of which Respondent con-

tends are important, we agree with Petitioners as stated on page 7 of their brief that Respondent's disagreement with the parent church's statements on civil disobedience is one of the main reasons why Respondents withdrew and severed all connections with The Presbyterian Church in the United States.

Presbyterians have learned from history that interference in civil affairs and church sponsored disobedience to civil laws eventually will bring reprisals from the State. The Council of Divines realized that in 1648 when the Constitution was prepared prohibiting such intereference. The Westminster Confession of Faith Chapter XXV, Section 4. (R. 7111).[2]

> "It is the duty of the people to pray for magistrates, to honor their persons, to pay them tribute and other dues, to obey their lawful commands, and to be subject to their authority, for conscience sake. Infidelity, or difference in religion, doth not make void the magistrate's just and legal authority, nor free the people from their due obedience to him, from which ecclesiastical persons are not exempted, much less hath the Pope any power or jurisdiction over them in their dominions, or over any of their lives if he shall judge them to be heretics, or upon any other pretense whatsoever."

This proposition, more than anything else, has protected Presbyterians from actions by the State for generations. Separation of Church and State is not unilateral. The church is just as obligated to refrain from interfering in civil matters as government is so enjoined from interfering in church matters. Disregarding the above, the Petitioner's General Assembly made pronouncements approving civil disobedience for its members (A. 55), and made

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2. Page references preceded by "R" refer to pages of the certified transcript of the record previously filed with the Court.

public declarations condemning the foreign policy of this country. (A. 108).

The Petitioners by encouraging civil disobedience violated one of the basic tenets of the Presbyterian faith. The pronouncements, edicts and ideas issued by the General Assembly were announced in the news media, were incorporated in the Sunday School lessons, and issued in bulletins.

The highest body of the Church cannot depart from the original doctrines and tenets of the church and force a local congregation to remain within the church or lose its property.

> "No denomination, however can exercise its share of control over a local congregation so as to require the property of the latter to be used for propagation of doctrines in conflict with the fundamental teachings of the denomination as accepted at the time the local congregation united with the denomination." 76 C.J.S. 849.

It comes as a shock that the Petitioners would argue in their brief that if the decision of the Supreme Court of Georgia is allowed to stand that it may bring into question the propriety of civil disobedience.

That the teaching of civil disobedience is a fundamental and substantial deviation from the Presbyterian faith as it was known in the Southern Presbyterian Church in 1890 cannot be questioned. Throughout the long history of the Presbyterian denomination the various Presbyterian Churches in this country, Southern, Northern, Independent and other groups of the Church have strictly adhered to the doctrine of compliance with the civil authorities never seeking civil redress except through the ballot box or by humble petition to any imagined or real injustices in the law.

While petitioners in their brief have restricted the question of the propriety of civil disobedience as related to civil rights and apparently would also limit it for some reason to the Southern States, we cannot see the importance of this geographical limitation.

This is not an integration problem or a "Southern" problem as Appellants have attempted to portray it. There is no evidence in the record concerning integration. Certainly the concern of the Northern Presbyterian Church, which has little Southern affiliation, is not over integration. The injection of this matter in Appellants' brief, in the absence of any evidence to support it, can only be designed to influence and prejudice the minds of the members of this Court.

Disregarding its Constitution, The Presbyterian Church in the United States had injected itself into this Country's foreign policy and has condoned and encouraged disobedience to civil law by its members. The right of an individual to disobey the civil law and suffer the consequences if he so desires is not an issue here. This is the individual's right if he wishes to suffer the consequences. However, it is not the right of The Presbyterian Church in the United States, under its Constitution, to prompt such action or to condone disobedience to civil authority.

We respectfully maintain that when The Southern Presbyterian Church abandoned these Sections of the Confession of Faith by passing the resolution on civil disobedience the Hull Memorial Presbyterian Church had a perfect right to withdraw from its voluntary association entered into in 1890 and in fact had to withdraw to maintain their faith.

The Church Constitution compels obedience to civil law, and there has been no amendment to this provision.

Evidence was presented in the trial court that Sunday School literature was distributed to them expressing views contrary to Presbyterian belief as held by Respondent. This was not disputed by Appellants, who now argue that the local church is not compelled to use these materials as they are not compelled to disobey civil laws. This argument is extremely vulnerable. The leadership of the church when speaking for the church must express views in conformity with its Constitution. Sunday School superintendents and teachers have a right to expect official material to reflect views of the Church as outlined by its Constitution, and should not be compelled to censor *official* Sunday School material. To preach doctrines contrary to the church belief is heresy, and to qualify it by saying you do not have to believe does not change it from such designation.

The cost of operating the National Church, including the preparation and publication of its literature is borne by the local churches including the Respondent. In diverting the monies and energies contributed by Hull Memorial Presbyterian Church and its members to causes in direct conflict with the basic beliefs of the Presbyterian faith as it existed in 1890 and in direct conflict with the Presbyterian faith as understood and practiced by members, officers and clergy of the Hull Memorial Presbyterian Church, the General Assembly required Hull to use its property for the propagation of doctrines in conflict with the fundamental teachings of the denomination.

There is little doubt that there is a strong movement within The Presbyterian Church in the United States to "modernize" the thinking of its members. This is evidenced by its Sunday School literature complained of by Respondent, its continued affiliation with the National Council of

Churches, who engage in political activities, its condoning the violation of the civil law, and the ordaining of women ministers. There are pressures afoot to eliminate doctrines peculiar to the Presbyterian faith so that eventually all protestant churches can merge into one body. The relative merits or demerits of such action is not an issue in this dispute. What is at issue is whether the National Church can revolutionize its beliefs and force individual congregations to accept such moves and use their property to advance such beliefs in the absence of lawful amendments to its Constitution. Where The Presbyterian Church in the United States can amend its Constitution it has done so, where it could not be done the amendatory process was ignored and ultra vires actions were taken by the General Assembly without regard to the beliefs of the membership of the local churches. It is these actions Respondent complains of. The local church was caught up in the revolutionary changes and its efforts to remain true to the original doctrine and beliefs of the church as practiced in 1890 was to no avail.

The deviations complained of were a substantial and radical departure from the Presbyterian faith and compelled Respondent's withdrawal.

CONCLUSION

Wherefore, the Federal question not having been raised properly, this court should not review the judgment below.

There being no violation of freedom of religion clause of the United States Constitution the judgment of the Supreme Court of Georgia should be allowed to stand.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that we have this day served Mr. Robert B. Troutman and Mr. Charles L. Gowen, 434 Trust Company of Georgia Building, Atlanta, Georgia 30303 and Mr. Frank S. Cheatham, Jr., 32 East Bay Street, Savannah, Georgia 31401, attorneys for the Petitioners, in the foregoing matter with a copy of this brief by depositing in the United States mail a copy of the same in a properly addressed envelope with adequate air-mail postage thereon.

This 16th day of September, 1968.

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